

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3302

IN THE MATTER OF:

Served March 13, 1989

Application of THE AIRPORT)
CONNECTION, INC., to Transfer a)
Portion of Certificate of Public)
Convenience and Necessity No. 111)
to AIRPORT BAGGAGE CARRIERS, INC.)

Case No. AP-88-27

By application filed July 7, 1988, The Airport Connection, Inc. (TAC or transferor), seeks approval to transfer, in its entirety, Part B of WMATC Certificate No. 111 to Airport Baggage Carriers, Inc. (ABC or transferee). The authority which TAC seeks to convey to ABC is the following:

PART B

CHARTER OPERATIONS

Transporting passengers together with their baggage in the same vehicle with passengers, as follows:

(1) between Washington National Airport, Gravelly Point, Va., and Dulles International Airport, Herndon, Va., on the one hand, and, on the other, points in Montgomery County, Md.

RESTRICTED . . . to the transportation of passengers and aircraft crews having a prior or subsequent movement by air; and

(2) between points in the Metropolitan District, excluding Montgomery County, Md., on the one hand, and, on the other, points in the Metropolitan District, excluding Montgomery County, Md.

RESTRICTED . . . against transportation solely within the Commonwealth of Virginia.

Public hearings on the matter were held October 6, 1988, and January 5, 1989, pursuant to Order Nos. 3226 and 3264, served September 2, 1988, and December 13, 1988, respectively, both of which are incorporated herein by reference. Transferor, transferee, The Airport Connection, Inc., II (TAC II); Airport Transit, Inc. (ATI); Babel Travel Service, Inc.; and the Metropolitan Washington Airports Authority (MWAA) presented evidence in the matter.

SUMMARY OF EVIDENCE

Transferor is a Virginia corporation organized for the purpose of transporting passengers and their luggage by motor vehicle as a common carrier. It holds WMATC Certificate No. 111. Certificate No. 111 authorizes the following transportation:

IRREGULAR ROUTES

PART A

SPECIAL OPERATIONS

Transporting passengers and their baggage, in the same vehicle with passengers, between Washington National Airport, Gravelly Point, Va., and Dulles International Airport, Herndon, Va., on the one hand, and, on the other, points in the Metropolitan District.

PART B

CHARTER OPERATIONS

Transporting passengers together with their baggage in the same vehicle with passengers, as follows:

(1) between Washington National Airport, Gravelly Point, Va., and Dulles International Airport, Herndon, Va., on the one hand, and, on the other, points in Montgomery County, Md.

RESTRICTED in B(1) above to the transportation of passengers and aircraft crews having a prior or subsequent movement by air; and

(2) between points in the Metropolitan District, excluding Montgomery County, Md., on the one hand, and, on the other, points in the Metropolitan District, excluding Montgomery County, Md.

RESTRICTED in A and B above against transportation solely within the Commonwealth of Virginia.

Currently transferor's conduct of airport ground transportation is managed by Airport Transit, Inc. The application represents that TAC's stock will be transferred to ATI. Transferor is wholly owned by Airport Baggage Carriers, Inc. TAC's officers are Mordecai E. Buckingham, III, president and treasurer, and John Tanavage, vice-president and secretary.

Transferee is a Maryland corporation formed in 1979 for the purpose of acting as a common carrier and contract carrier of freight. However, its Articles of Incorporation do not preclude it from acting as a common carrier of passengers. In fact, transferee has been authorized by the Interstate Commerce Commission to perform certain interstate charter and special operations since 1984. Mr. Mordecai E. Buckingham, III, transferee's president and treasurer, owns 50 percent of the shares authorized by ABC's Articles of Incorporation. Mr. John Tanavage, transferee's vice-president and secretary, owns the remaining 50 percent of the company's stock. ABC currently holds no authority from this Commission. Its equipment list submitted in response to Order No. 3226 shows five 11-passenger vans. A revised equipment list submitted at hearing on January 5, 1989, shows three 21-passenger vehicles (tagged in Maryland but currently not in service), five 11-passenger vans, and twelve 47-passenger coaches "used by charter department." If this application is granted, transferee would conduct operations using twelve motor coaches and three mini-buses. No small vans would be used.

With its application transferee submitted a balance sheet as of May 31, 1988, which showed total assets of \$1,000,916 consisting of current assets of \$567,842 (\$390,124 of which are due from a wholly owned subsidiary, The Airport Connection, Inc., II); fixed assets, after allowance for depreciation, of \$431,074; and other assets of \$2,000. Current liabilities of \$265,605, long-term liabilities of \$63,126, and equity of \$672,185 which includes a year-to-date loss of \$10,870 are listed. A "cash position statement" for the month ended April 30, 1988, shows cash on hand of \$12,100, cash sales of \$71,511, total collected (pre- and post-petition */) of \$26,929, and total cash paid out of \$101,797, resulting in \$8,743 cash at the end of the month.

In response to Order No. 3226, ABC submitted a balance sheet dated June 30, 1988, which showed total assets of \$1,012,349.56, consisting of current assets of \$580,840.54 (\$390,124.46 of which are monies due from TAC II) and fixed assets, after allowance for depreciation, of \$429,509.02. Current liabilities of \$265,752.07 (including \$227,022.42 of notes payable) and long-term liabilities of \$59,089.41 are listed. Equity consists of \$2,000 common stock, \$681,054.97 retained earnings, and year-to-date profit of \$4,453.11. For the six months ended June 30, 1988, ABC lists income of \$538,413.79 (including \$5,696.67 in diversion income) and costs of \$533,960.68, resulting in net income of \$4,453.11. For the month of June, ABC lists income of \$101,236.57 (including \$791 in diversion income) and costs of \$85,913.58, resulting in net income of \$15,322.99. At hearing transferee submitted a statement of income and expenses for the four months ended October 31, 1988, showing income of \$280,634.49 (including diversion income of \$18,801.96); direct costs of \$189,753.97; and expenses of \$74,940.92, resulting in net income of \$15,939.60.

*/ Both transferor and transferee are Debtors-In-Possession in certain proceedings before the United State Bankruptcy Court for the District of Maryland.

Pursuant to a Stipulation and Consent Order in combination with a reorganization plan as approved by the United States Bankruptcy Court for the District of Maryland, ABC has been appointed TAC's agent for the purpose of operating TAC's general charter (other than airport diversion) department. ABC owns the buses used in TAC's charter division. At hearing transferee introduced an operating statement for the three months ended September 30, 1988, which showed that TAC's charter division had income of \$244,532, direct costs of \$166,908 and expenses of \$67,295 resulting in net income of \$10,329.

The Airport Connection, Inc., II, is a Maryland corporation formed, inter alia, for the purpose of transporting passengers and their baggage by motor vehicle as a common carrier. It is a wholly-owned subsidiary of ABC. Mordecai E. Buckingham, III, is TAC II's president and sole director and owns 237 shares of the company's stock. John Tanavage is TAC II's vice-president and owns an equal amount of stock. Joan Bruchey serves as TAC II's secretary and treasurer. The company's general counsel owns 75 shares of TAC II's stock. TAC II holds WMATC Certificate No. 118 which authorizes the following transportation:

IRREGULAR ROUTES:

SPECIAL OPERATIONS:

Transporting passengers, together with baggage in the same vehicle with passengers, between Greenbelt, Md., on the one hand, and, on the other, the Capital Hilton Hotel and the Washington Hilton Hotel, Washington, D.C.

TAC II's equipment list submitted in response to Order No. 3226 shows four 46-passenger coaches, owned by the Maryland State Aviation Administration (SAA), twelve 47-passenger coaches, "used by the charter department," and seven 11-passenger vans. A revised equipment list submitted at hearing on January 5, 1989, shows seven 11-passenger vans. According to TAC II's representative the four SAA coaches were inadvertently deleted from the list.

In response to Order No. 3226, TAC II submitted a balance sheet dated July 31, 1988, which showed total assets of \$33,493.32 including \$24,252.78 in current assets; \$5,140.65 in fixed assets, after allowance for depreciation; and \$100 in other assets. Current liabilities of \$454,441.14, including \$396,746.96 due to ABC and \$8,893.21 due to TAC are listed. Equity consists of \$1,000 common stock; a deficit to retained earnings of \$414,973.70; and a year-to-date loss of \$6,974.12. A statement of income and expenses for the month ended July 31, 1988, shows income of \$85,995.47 and expenses of \$92,969.59, resulting in a net loss of \$6,974.12.

ABC's representative described the company's financial condition as "generally good" noting that since it had filed the petition for bankruptcy it has operated "in a profitable scale," showing a profit for the fiscal year ending June 30, 1988. TAC's

"charter division" which has been operated by ABC's principals since July 1988 ended its first quarter with a profit of \$10,300, the equivalent of four percent of gross. ABC, TAC II, and the TAC charter division are generally current with accounts, and the companies' principals have adopted a more conservative financial view as a result of their past financial experience.

With the express permission of the Administrative Law Judge, Richard A. Griesbach, MWAA's business manager, submitted an affidavit stating MWAA's support of the transfer at issue in this case. According to Mr. Griesbach it is MWAA's position that the "Stock Purchase Agreement" between TAC and ATI in combination with the transfer of Part B of Certificate No. 111 from TAC to ABC will benefit users of ground transportation at Washington National Airport, Arlington County, VA, and Washington Dulles International Airport, Loudoun County, VA.

DISCUSSION AND CONCLUSIONS

This case is governed by the Compact, Title II, Article XII, Sections 4(h) and 12. The standard for decision is consistency with the public interest. In determining whether this transfer is consistent with the public interest, the Commission considers, among other factors, the fitness of the carrier seeking to obtain the certificate, the fairness of the purchase price, the resulting competitive balance of the industry, whether the operating rights sought to be purchased are dormant, and whether the riding public would be benefited by a transfer of Part B of Certificate No. 111.

The Commission finds that the proposed transfer is consistent with the public interest. The operating rights to be transferred have not become dormant. On July 5, 1988, TAC entered an agreement to transfer to ABC that portion of its WMATC Certificate No. 111 authorizing it to conduct charter operations within the Metropolitan District. This application was filed two days later. At the time the agreement was signed, TAC was actively engaged in charter operations between points in the Metropolitan District as authorized by WMATC Certificate No. 111 and had been continuously engaged in such operations since 1984.

The transfer of Part B of WMATC Certificate No. 111 is part of a complex reorganization occasioned by TAC and ABC seeking protection from their creditors pursuant to Chapter 11 of the Bankruptcy Reform Act of 1978. In this context, the actual purchase price of the certificate is meaningless standing alone. Rather the fairness of the price must be judged in relation to the effect of the transaction on the traveling public. As a result of the transaction, TAC would continue to provide airport ground transportation. For its part ABC would continue to provide charter transportation within the Metropolitan District at rates which are identical to those in effect at the time the transfer was achieved. TAC's former creditors would be paid, and ABC, having divested itself of much of its former debt, would earn a higher rate of return. In consideration of all these circumstances the purchase price appears reasonable.

There is no discernable change in the competitive balance at the present time. Although two carriers would perform the work formerly accomplished by one certificate holder, the type of work performed would remain unchanged. In this case transferee would even be using much of the same equipment formerly used by transferor. If this application is granted, both TAC and ABC should be organizationally and financially stronger and thus able to offer better service pursuant to the authority contained in WMATC Certificate No. 111 to the public's benefit.

This brings us to the issue of ABC's fitness. ABC's principals are experienced in providing charter transportation within the Metropolitan District. The company owns suitable equipment as well as facilities at which to maintain and garage the equipment locally. No real issue has been raised in this proceeding regarding ABC's operational fitness. In light of ABC's financial experience, however, attention must be paid to its finances.

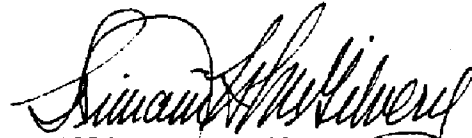
A consolidated statement of financial condition for transferor, transferee, and TAC II as of June 30, 1988, on which date all were under the management of Messrs. Buckingham and Tanavage, shows net worth of \$368,334 despite the companies' considerable debts. The companies which would survive under Messrs. Buckingham and Tanavage's management should this transfer be approved are ABC and TAC II. Those companies have little long-term debt (less than \$75,000), and have been operating since the bankruptcy filing in a manner sufficient to keep all accounts current and show a modest profit. In light of these considerations, we find transferee financially fit.

THEREFORE, IT IS ORDERED:

1. That the transfer of Certificate of Public Convenience and Necessity No. 111, Part B, from The Airport Connection, Inc., to Airport Baggage Carriers, Inc., is hereby approved.
2. That Airport Baggage Carriers, Inc., is hereby directed to file with the Commission within 30 days from the date of service of this order the following: (a) two copies of its WMATC Tariff No. 1 as required by Commission Regulation No. 55; (b) a certificate of insurance in compliance with Commission Regulation No. 62; (c) an affidavit of identification as prescribed by Commission Regulation No. 67 for which purpose WMATC No. 150 is hereby assigned; (d) a list of all equipment to be used in the Metropolitan District stating for each vehicle the make, model, serial number, license plate number (with jurisdiction), vehicle number, and seating capacity; and (e) evidence of ownership or equipment lease as prescribed by Commission Regulation No. 69 for each vehicle to be used in the Metropolitan District.
3. That Certificate of Public Convenience and Necessity No. 150 of Airport Baggage Carriers, Inc., will be issued as contained in the attached Appendix upon acceptance of the required materials by the Commission.

4. That unless Airport Baggage Carriers, Inc., complies with the provisions of this order within 30 days from the date of service hereof, or such additional time as may be authorized by the Commission, the grant of approval herein will stand denied in its entirety effective upon the expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:



William H. McGilvery
Executive Director

NO. 150

AIRPORT BAGGAGE CARRIERS, INC.

BALTIMORE, MARYLAND

By Order Nos. 2578, 2706, and 3302 of the Washington Metropolitan Area Transit Commission, served July 13, 1984; May 21, 1985; and March 13, 1989;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order Nos. 2578, 2706, and 3302;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES

CHARTER OPERATIONS, transporting passengers together with their baggage in the same vehicle with passengers, as follows:

(1) between Washington National Airport, Arlington County, VA, and Washington Dulles International Airport, Loudoun County, VA, on the one hand, and, on the other, points in Montgomery County, MD; and

(2) between points in the Metropolitan District, excluding Montgomery County, MD, on the one hand, and, on the other, points in the Metropolitan District, excluding Montgomery County, MD.

RESTRICTED in (1) above to the transportation of passengers and aircraft crews having a prior or subsequent movement by air;

AND RESTRICTED in (1) and (2) above against transportation solely within the Commonwealth of Virginia.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.